

# Contingency Contracting

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## Training



**Ethics, Fraud  
Indicators,  
Standards of  
Conduct, and  
Procurement  
Integrity**

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**“Doing the Right**

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**Agile Contracting Support...Anytime...  
Anywhere**



# Overview

- Key Points
- General principles
- Cover the most frequently-encountered rules
  - The General Ethics Principles
  - Conflicts of Interest
  - Pre- & Post-Government Employment
  - Gifts
- Combat Trafficking in Persons
- Identifying Fraud Indicators
- Investigations
- Interacting with Contractor Employees
- Final Thoughts
- Conclusion





# Key Points

- Ethics are vitally important, particularly in the contingency environment because of the cultural differences.
- Strictly avoid any conflict of interest, or apparent conflict of interest.
- You must not forget your duty is to the United States (US) Government, Department of Defense (DoD) and your customer...not the contractor.
- You may not accept any gift because of your official position and you may not accept any gift from a contractor, a potential contractor, or a partnering contractor.
- There are very limited exceptions to the gift prohibition. Unavoidable violations must be documented and reported to counsel immediately.
- DoD will not tolerate any form of human trafficking or forced labor by any of its contractors or contractor personnel.
- If you are ever in doubt, contact your legal advisor.





# General Principles

- Biggest Responsibilities of a CCO:
  - Effectively communicating your customer's needs to the supplier
  - Establishing a solid working relationship with your customer
    - But remember you are working for the US Government's interests, not the contractor's
- Conduct yourself the right way: Integrity First





# General Principles

- Public service is a public trust
  - The Federal government has its own set of ethical rules, called “standards of conduct” found in regulations issued by the Office of Government Ethics (5 CFR 2635), supplemented by a DOD regulation (5500.7-R), called the Joint Ethics Regulation (JER)





# General Principles

- First, last, and throughout are core values
  - The obligations of Government service, and all of the subordinate rules, rest on very basic values
  - As leaders and decision-makers in our Department, it is important to recognize that leadership and ethics go hand-in-hand
- If you keep core values in mind as you go through this briefing, and more importantly, through your normal work day, the ethics rules that follow will make more sense





# Basic Obligations of Government Service

- As a public servant, you have certain unique ethical responsibilities
  - Every Federal employee (a term that includes military personnel) has a responsibility to the citizens of the United States to place loyalty to the Constitution, our laws and ethical principles above private gain
  - Every employee shall respect and adhere to the 14 ethical principles set forth by the Office of Government Ethics (OGE), DOD, and the Air Force
- You must not only comply with these rules yourself, but you must ensure your subordinates follow the rules, too





# Basic Obligations of Government Service

## The 14 Rules

- You must place loyalty to the Constitution and the law ***above your private gain***
- You shall not hold financial interests that ***conflict with*** your official duties
- You shall not engage in financial transactions using ***nonpublic information*** or permit the release of such information for any other improper use
- ***You shall not solicit or accept any gift*** from any person or entity seeking official action or doing business with DOD (including the Dept of the Air Force)





# Basic Obligations of Government Service

## The 14 Rules

- You must put forth ***honest efforts*** in the performance of your duties
- You shall not knowingly make unauthorized commitments or promises that bind the Government ***without authority***
- You shall not use public office for ***private gain***
- You shall ***act impartially*** and not give preferential treatment to any person or entity





# Basic Obligations of Government Service

## The 14 Rules

- You must ***protect and conserve Government property*** and use it only for authorized purposes
- You shall not engage in, or seek, ***outside employment or activities*** that conflict with your official duties
- You shall ***disclose fraud, waste, abuse and corruption*** to appropriate authorities
- You must ***act in good faith*** in satisfying the obligations of citizenship (including paying just financial obligations and taxes)





# Basic Obligations of Government Service

## The 14 Rules

- You shall adhere to all laws that provide ***equal opportunity*** for all Americans regardless of race, color, religion, sex, national origin, age or handicap
- You shall endeavor to ***avoid any actions*** that create the appearance of unethical conduct, as seen from the perspective of a reasonable person





# Conflicts of Interest

One of the most basic ethical principles is that you may not take official action on a matter that may impact your personal interests. Thus, the ethics rule provides that...

- An employee is prohibited [by statute] from participating personally and substantially in an official capacity in any particular matter in which he (or any person whose interests are imputed to him) has a financial interest if the matter will have a direct and predictable effect on that interest.





# Conflicts of Interest

In other words...

- If you are officially involved in a matter that could affect your own financial interests, or those of someone you are related to or associated with, you must remove yourself from acting on that matter in your official capacity
- A closely-related rule: if your official involvement creates even the appearance of a conflict of interest to a reasonable person, you should remove yourself from that matter or, at a minimum, seek legal advice





# Conflicts of Interest

- It is hard to overstate the importance of this basic rule...
  - The financial interests of your spouse, minor child, business investments, outside organizations (in which you are “active” or hold office) or entities in which you are seeking employment are all imputed to you
  - It is one of the very few areas of the law where you do not have to be “guilty” to find yourself in trouble – even looking guilty can land you in trouble because...

***Appearances count!***





# Conflicts of Interest

When conflicts of interest arise, there are conventional ways to handle them, with advice from your ethics counselor. These include:

- Disqualification or recusal (stepping aside from decisions that could affect your financial interests)
- Waivers of disqualification (continuing your involvement, but only with full disclosure and permission from Agency officials)
- Divestiture (removing the financial interest that creates the conflict, which often involves selling the financial interest at issue)





# Conflicts of Interest

**When conflicts arise -- seek advice from your ethics counselor!**





# Post-Government Employment

- You cannot defer understanding the rules on job seeking and post-employment until you face separation or retirement yourself.
- This is because:
  - You may be contacted by former AF officials and you must determine if you can deal with them, or
  - You may supervise someone who is seeking outside employment and you must understand the rules that apply to that person





# Post-Government Employment

## “Seeking Employment”

- You are “seeking employment” -- and must execute a written disqualification -- when you...
  - Submit a resume, job application, or make an unsolicited employment contact with a prospective employer, or
  - Respond to an unsolicited overture regarding employment (unless you reject outright), or
  - Engage in employment discussions with a prospective employer





# Post-Government Employment Disqualification

- When you are “seeking employment,” you can avoid violating the law if you...
  - Take no official action with regard to the company with which you are “seeking employment,” and
  - Submit a written disqualification to your supervisor, with a copy to your ethics office (SAF/GCA), and
  - Work with your supervisor and subordinates to set up an appropriate screening and referral process to ensure your disqualification is effective, and
  - Stick with the plan - avoid any official action that could impact the person or entity in question





# Post-Government Employment Termination of Restrictions

- You are no longer “seeking employment” when:
  - You or the prospective employer rejects the possibility of employment and discussions have terminated

or

- Two months have passed after you have mailed a resume and no response has been received from the prospective employer





# Post-Government Employment Seeking Employment (cont.)

- You may accept travel expenses from a prospective employer during negotiations *if* that is part of their normal interviewing and hiring process
- If travel compensation exceeds \$285, you must report the amount and the source on your financial disclosure forms (OGE450/SF278)
- There is no limit to the number of potential employers you may be in negotiations with at any given time, but keep your disqualification letter current to reflect them





# Post-Government Employment Post-Employment Rules

- Once you leave government service and accept employment with a private entity, you are subject to the criminal post-employment rules under 18 USC 207.
- Even if you work for a DOD contractor, sit along side DOD personnel, and work toward a common goal, you represent the contractor's interests now - not the United States government





# Post-Government Employment

## 18 USC 207

- *1-year ban* on representing anyone back to your agency on any matter, regardless of whether you were previously involved (SF 278 filers only)
- *Lifetime ban* on representing someone back to your agency on “*particular matters*” that you worked on “*personally and substantially*” while in Government service





# Post-Government Employment

## 18 USC 207

- *2-year ban* on representing someone back to your agency on particular matters that were pending under your official responsibility during your last year of service
- *1-year ban* representing, aiding, or advising foreign governments or political party with the intent to influence an official decision of the United States





# Post-Government Employment

## 18 USC 207

- Some Exceptions to the 18 USC 207 Rules:
  - Performing official government duties (pursuant to regaining employee status)
  - Representing certain other entities, such as...
    - Agency or instrumentality of a state or local government
    - A college or university
    - Hospital or medical research organization
    - Political parties and campaign committees





# Post-Government Employment Procurement Integrity Act

- This law prohibits you from accepting compensation from a contractor for one year after you serve as a....
  - Procuring Contracting Officer or Administrative Contracting Officer
  - Source Selection Authority
  - Member of Source Selection Evaluation Board
  - Chief of a financial or technical evaluation team
  - Program Manager
  - Deputy Program Manager

**.... at the time the contractor was selected for, or awarded, a contract of \$10,000,000 or more**





# Post-Government Employment Procurement Integrity Act

- The Procurement Integrity Act also applies if you personally made any of the following decisions to...
  - Award a contract, subcontract, task order or delivery order over \$10,000,000
  - Establish overhead or other rates in excess of \$10,000,000;
  - Approve issuance of contract payment or payments in excess of \$10,000,000
  - Pay or settle a claim for more than \$10,000,000





# Post-Government Employment Procurement Integrity Act

The Procurement Integrity Act restrictions **do not** restrict working for a subdivision or affiliate of a contractor that does not produce the same or similar products or services as the division or affiliate that was the party to the covered contract; but be careful in this area.





# Gifts from Outside Sources

- Another basic rule is that as a Federal official, you may not accept gifts given to you because of your government position. Thus, the rules provides...
  - “An employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking...action from, doing business with or... having interests that may be substantially affected by the performance or non-performance of the employee’s duties.”





# Gifts from Outside Sources

What does this rule mean in practical terms?

- You may not solicit gifts from anyone, for any reason
  - That means for yourself, for others, or for the US military services
- You may not accept gifts from “prohibited sources”
- A “prohibited source” is one who does, or seeks, DOD business or one who could be substantially affected by your official decisions – this includes private organizations and charities
- You may not accept gifts given to you because of your official position as a Government official





# Gifts from Outside Sources

- Common exceptions to the gift ban include:
  - Gifts valued at \$20 or less, per occasion (up to \$50 from the same source in a calendar year)
  - Gifts based on family relationships or personal friendships (this includes only established, long-standing relationships)
  - Certain social engagements (such as widely attended gatherings or personal social gatherings with friends)
  - Awards connected to bona fide recognition programs
  - Gifts or opportunities based on outside activities or employment (completely unrelated to your Government position)





# Gifts from Outside Sources

- If in a foreign area, you may accept food, refreshments, or entertainment during meals or meetings, if:
  - The US market value does not exceed the Dept. of State's maximum per diem allowance
  - Guests include non-US citizens or foreign diplomats
  - Attendance is part of official duties
  - The gifts are not from foreign governments





# Gifts from Outside Sources

## Anti-Kickback Act of 1996

- “Prohibits attempted as well as contemplated kickbacks, which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation”
- Giving or accepting a bribe is a crime punishable by fine and/or up to 10 years in prison





# Gifts from Outside Sources

- If you receive a gift that cannot be accepted, you must do one of the following things:
  - Return the item to the donor, or
  - Pay the fair market value of the item, or
  - If perishable (i.e., food or flowers), give the gift to a charity or share it within the office
    - Note: except for perishable items, you may not redirect the gift to your favorite charity





# Gifts from Outside Sources

- If the contractor seems offended:
  - Accept the gift and safeguard it
  - Turn it over to counsel
  - Write a memo for the record mentioning legal advice was obtained
  - If perishable, give the gift to a charity or share it with co-workers
- Seek legal counsel





# Reporting of Gifts

- Employees who must file financial disclosure reports must report travel-related cash reimbursements or gifts totaling more than \$285 from any one source, received by the employee, spouse or dependent children
- Reporting is done on OGE Form 450, Part V or on SF 278, Schedule B, Part II





# Reporting of Gifts

Notwithstanding an exception, how will it be perceived if I accept a gift?

Accepting gifts can be more than a JER violation; they could be treated as a bribe or evidence of graft (federal offenses)!





# Combat Trafficking in Persons

- Vendors may be willing to supply escorts as a form of gratuity, kickback, bribery, or compensation
- The DoD will not tolerate any form of sex trafficking or forced labor





# Identifying Fraud Indicators

- Be aware of:

- Product substitution
- Defective pricing
- Cost mischarging
- Price fixing
- Fabrication of records
- Bribes, gratuities, and kickbacks
- Government employee collusion and fraud
- False claims on invoices
- Incomplete or irregular contract documentation
- Companies conducting business under several names





# Identifying Fraud Indicators

## Bribery - 18 USC 201(b)(1)

"(b) Whoever . . . . .

(1) directly or indirectly, . . . , offers . . . anything of value to any public official . . . with intent . . . . .

(A)to influence any official act; . . . . .

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.“





# Identifying Fraud Indicators

## Graft - 18 USC 201(b)(2)

“(b) Whoever. . . .

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act. . . .

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States."





# Investigations

- As federal employees we are required to cooperate and assist federal investigators concerning
  - Allegations of fraud against US by contractors, improper invoicing by contractors, etc.
  - As federal employees, we are obligated to secure the government's interests
- Federal investigators: FBI, DCIS, OSI, IG, auditors
- Federal investigators permitted access to US Govt. documents and information
- If requested, allow access and contact your supervisor to inform him/her





# Investigations

- When investigators come:
  - Cooperate fully with FBI, OSI, DCIS, etc.
  - Cease routine destruction of records--including substantive emails--relating to the contract/subject of the investigation
  - Do not tell the contractor about the investigation
  - Tell only people who have a need to know
  - If documents taken, keep a copy of what was taken





# Investigations

- If investigators interview PM/COR/CO
  - Stick to the facts
  - Do not to guess or speculate
  - Stick to what you know from your own personal knowledge
  - Be careful of mixing personal knowledge and hearsay





# Interacting with Contractor Employees

- **You must not:**

- Interfere in contractor-employee relations
- Tell contractors who to hire or promote
- Allow work beyond the performance work statement
- Allow work prior to the obligation of funding
- Reassign or discipline contractor employees
- Establish hours of duty or grant/deny leave





# Interacting with Contractor Employees

- **However, limited authority is granted to acquire the services of experts, if:**
  - The duties are temporary
  - It is advantageous to national defense
  - DoD personnel with necessary skills aren't available
  - Excepted appointment cannot be obtained
  - A Nonpersonnel services contract isn't practicable
  - Any other determination required by statutes has been made





# Final Thoughts

We are a nation at war



- Armed Forces personnel are in harm's way every day
- They, and their families, trust you to adhere to our core values in your every decision
- You, as a senior official or key support person, establish the ethical climate
- It is truly a time for service before self





# Final Thoughts

## What can you do?

- Heed the ethics rules - no matter how minor they seem
- Lead by example - as a leader, you are the most effective resource in the ethics program
- Encourage ethics awareness and stress compliance within your area of responsibility
- When explaining your decisions, incorporate the moral and ethical considerations -- explain why they matter
- Encourage your personnel to speak up when they believe ethics rules are being compromised or ignored
- Seek legal guidance early and often





# Conclusion

- Key Points
- General principles
- Cover the most frequently-encountered rules
  - The General Ethics Principles
  - Conflicts of Interest
  - Pre- & Post-Government Employment
  - Gifts
- Combat Trafficking in Persons
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# THE END!





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Anywhere***